

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA AMES, individually and as a successor in interest to Henry Simmons,  
deceased, | Case No. 5:18-cv-01362-SJO-FFM

Plaintiff,

v.  
**COUNTY OF SAN BERNARDINO;**  
and DOES 1-10, inclusive.

Defendants.

## **STIPULATED PROTECTIVE ORDER**

Judge: *Honorable S. James Otero*

Trial Date: June 30, 2020

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1       1.     A.     PURPOSES AND LIMITATIONS

2                 Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court  
6 to enter the following Stipulated Protective Order. The parties acknowledge that  
7 this Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under applicable legal principles. The parties further acknowledge, as set forth in  
11 Section 12.3 below, that this Stipulated Protective Order does not entitle them to  
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a  
14 party seeks permission from the court to file material under seal.

15               B.     GOOD CAUSE STATEMENT

16                 Defendants County of San Bernardino (“County”) and Defendant Deputies  
17 may be producing documents concerning confidential internal policies, which  
18 documents are generally unavailable to the public. The disclosure of this  
19 information may jeopardize the security of the County’s operations and jeopardize  
20 the safety of its peace officers. Defendants may also be producing documents that  
21 contain personal and confidential information regarding individuals which  
information is generally unavailable to the public, including peace officer  
personnel records. The disclosure of this information to the public may violate  
those individuals’ privacy rights. Defendants may also be producing video and  
audio related to the incident at issue in this case, as well as investigation reports,  
all of which is generally unavailable to the public, and the disclosure of which

1 could violate individuals' privacy rights and jeopardize the safety of officers.  
2 Accordingly, to expedite the flow of information, to facilitate the prompt  
3 resolution of disputes over confidentiality of discovery materials, to adequately  
4 protect information the parties are entitled to keep confidential, to ensure that the  
5 parties are permitted reasonable necessary uses of such material in preparation for  
6 and in the conduct of trial, to address their handling at the end of the litigation,  
7 and serve the ends of justice, a protective order for such information is justified in  
8 this matter. It is the intent of the parties that information will not be designated as  
9 confidential for tactical reasons and that nothing be so designated without a good  
10 faith belief that it has been maintained in a confidential, non-public manner, and  
11 there is good cause why it should not be part of the public records of this case.

12       2. DEFINITIONS

13       2.1 Action: *Cynthia Ames v. County of San Bernardino, et al.*, Central  
14 District of California, Case No. 5:18-cv-01362-SJO-FFM.

15       2.2 Challenging Party: a Party or Non-Party that challenges the  
16 designation of information or items under this Order.

17       2.3 "CONFIDENTIAL" Information or Items: information (regardless of  
18 how it is generated, stored, or maintained) or tangible things that qualify for  
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
20 the Good Cause Statement.

21       2.4 Counsel: Counsel of Record for each respective party, including any  
22 outside counsel or in-house counsel of record, as well as their respective support  
23 staff.

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1           2.5 Designating Party: a Party or Non-Party that designates information  
2 or items that it produces in disclosures or in responses to discovery as  
3 “CONFIDENTIAL.”

4           2.6 Disclosure or Discovery Material: all items or information, regardless  
5 of the medium or manner in which it is generated, stored, or maintained (including  
6 among other things, testimony, transcripts, and tangible things), that are produced  
7 or generated in disclosures or responses to discovery in this matter.

8           2.7 Expert: a person with specialized knowledge or experience in a  
9 matter pertinent to the litigation who has been retained by a Party or its counsel to  
10 serve as an expert witness or as a consultant in this Action.

11          2.8 House Counsel: attorneys who are employees of a party to this  
12 Action. House Counsel does not include Outside Counsel of Record or any other  
13 outside counsel.

14          2.9 Outside Counsel of Record: attorneys who are not employees of a  
15 party to this Action, but are retained to represent or advise a party to this Action  
16 and have appeared in this Action on behalf of that party or are affiliated with a law  
17 firm which has appeared on behalf of that party, and including their support staff.

18          2.10 Non-Party: any natural person, partnership, corporation, association,  
19 or other legal entity not named as a Party to this action.

20          2.11 Party: any party to this Action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Outside Counsel of Record (and  
their support staffs).

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1           2.12 Professional Vendors: persons or entities that provide litigation  
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
3 or demonstrations, and organizing, storing, or retrieving data in any form or  
medium) and their employees and subcontractors.

4           2.13 Protected Material: any Disclosure or Discovery Material that is  
5 designated as “CONFIDENTIAL.”

6           2.14 Producing Party: a Party or Non-Party that produces Disclosure or  
7 Discovery Material in this Action.

8           2.15 Receiving Party: a Party that received Disclosure or Discovery  
9 Material from a Producing Party.

10          3. SCOPE

11          The protections conferred by the Stipulation and Order cover not only  
12 Protected Material (as defined above), but also (1) any information copied or  
13 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
14 compilations of Protected Material; and (3) any testimony, conversations, or  
presentations by Parties or their Counsel that might reveal Protected Material.

15          Any use of Protected Material at trial shall be governed by the orders of the  
16 trial judge. This Order does not govern the use of Protected Material at trial.

17          4. DURATION

18          Even after final disposition of this litigation, the confidentiality obligations  
19 imposed by this Order shall remain in effect until a Designating Party agrees  
otherwise in writing or a court order otherwise directs. Final disposition shall be  
20 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
with or without prejudice; and (2) final judgment herein after the completion and  
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1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
2 including the time limits for filing any motions or applications for extension of  
3 time pursuant to applicable law.

5. **DESIGNATING PROTECTED MATERIAL**

5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

6 Each Party or Non-Party that designates information or items for protection  
7 under this Order must take care to limit any such designation to specific material  
8 that qualifies under the appropriate standards. The Designating Party must  
9 designate for protection only those parts of material, documents, items, or oral or  
10 written communications that qualify so that other portions of the material,  
11 documents, items, or communications for which protection is not warranted are  
not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited.  
13 Designations that are shown to be clearly unjustified or that have been made of an  
14 improper purpose (e.g., to unnecessarily encumber the case development process  
15 or to impose unnecessary expenses and burdens on other parties) may expose the  
Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that  
it designated for protection do not qualify for protections, Designating Party must  
17 promptly notify all other Parties that it is withdrawing the inapplicable  
18 designation.

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1           5.2   Manner and Timing of Designations.

2           Except as otherwise provided in this Order (see, e.g., second paragraph of  
3           section 5.2(a) below, or as otherwise stipulated or ordered, Disclosure or  
4           Discovery Material that qualifies for protection under this Order must be clearly  
so designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6           (a) For information in documentary form (e.g., paper or electronic  
7           documents, but excluding transcripts of depositions or other  
8           pretrial or trial proceedings), that the Producing Party affix at a  
9           minimum, the legend “CONFIDENTIAL” (hereinafter  
“CONFIDENTIAL legend”), to each page that contains protected  
10          material. If only a portion or portions of the material on a page  
11          qualifies for protections, the Producing Party also must clearly  
12          identify the protected portion(s) (e.g., by making appropriate  
markings in the margins).

13          A Party or Non-Party that makes original documents available for  
14          inspection need not designate them for protection until after the  
15          inspecting Party has indicated which documents it would like  
copied and produced. During the inspection and before  
16          designation, all of the material made available for inspection shall  
17          be deemed “CONFIDENTIAL.” After the inspecting Party has  
18          identified the documents it wants copied and produced, the  
Producing Party must determine which documents, or portions  
19          thereof, qualify for protection under this Order. Then, before  
20          producing the specified documents, the Producing Party must  
21          affix the “CONFIDENTIAL legend” to each page that contains

1 Protected Material. If only a portion or portions of the material on  
2 a page qualifies for protection, the Producing party also must  
3 clearly identify the protected portion(s) (e.g., by making  
appropriate markings in the margins).

- 4 (b) For testimony given in depositions, that the Designating Party  
5 identify the Disclosure or Discovery Material on the record,  
6 before the close of the deposition, all protected testimony.  
7 (c) For information produced in some form other than documentary  
8 and for any other tangible items, that the Producing Party affix in  
9 a prominent place on the exterior of the container or containers in  
which the information is stored the "CONFIDENTIAL legend."  
10 If only a portion or portions of the information warrants  
protection, the Producing Party, to the extent practicable, shall  
11 identify the protected portion(s).

12       5.3 Inadvertent Failures to Designate.

13       If timely corrected, an inadvertent failure to designate qualified information  
14 or items does not, standing alone, waive the Designating Party's right to secure  
15 protection under this Order for such material. Upon timely correction of a  
16 designation, the Receiving Party must make reasonable efforts to assure that the  
material is treated in accordance with the provisions of this Order.

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1       6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2       6.1 **Timing of Challenges.**

3           Any Party or Non-Party may challenge a designation of confidentiality at  
4           any time that is consistent with the Court's Scheduling Order.

5       6.2 **Meet and Confer.**

6           The Challenging Party shall initiate the dispute resolution process under  
7           Local Rule 37.1, et seq.

8       6.3 The burden of persuasion in any such challenge proceeding shall be  
9           on the Designating Party. Frivolous challenges, and those made for an improper  
10          purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
11          parties) may expose the Challenging Party to sanctions. Unless the Designating  
12          Party has waived or withdrawn the confidentiality designation, all parties shall  
13          continue to afford the material in question the level of protection to which it is  
14          entitled under the Producing Party's designation until the Court rules on the  
15          challenge.

16       7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

17       7.1 **Basic Principles.**

18           A Receiving Party may use Protected Material that are disclosed or  
19           produced by another Party or by a Non-Party in connection with this Action only  
20          for prosecuting, defending, or attempting to settle this Action. Such Protected  
21          Material may be disclosed only to the categories of persons and under the  
22          conditions described in this Order. When the Action has been terminated, a  
23          Receiving Party must comply with provisions of section 13 below (FINAL  
24          DISPOSITION).

1           Protected Material must be stored and maintained by a Receiving Party at a  
2 location and in a secure manner that ensures that access is limited to the persons  
3 authorized under this Order.

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5           7.2    Disclosure of “CONFIDENTIAL” Information or Items.

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7           Unless otherwise ordered by the court or permitted in writing by the  
8 Designating Party, a Receiving Party may disclose any information or item  
9 designated “CONFIDENTIAL” only to the following:

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- 11           (a) The Receiving Party’s Outside Counsel of Record in this Action,  
12                 as well as employees of said Outside Counsel of Record to whom  
13                 it is reasonably necessary to disclose the information for this  
14                 Action;
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- 16           (b) The officers, directors, and employees (including House Counsel)  
17                 of the Receiving Party to whom disclosure is reasonably  
18                 necessary for this Action;
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- 20           (c) Experts (as defined in this Order) of the Receiving Party to whom  
21                 disclosure is reasonably necessary for this Action and who have  
               signed the “Acknowledgment and Agreement to Be Bound”  
               (Exhibit A);
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- 23           (d) The court and its personnel;
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- 25           (e) Court reporters and their staff;
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- 27           (f) Professional jury or trial consultants, mock jurors, and  
28                 Professional Vendors to whom disclosure is reasonably necessary  
29                 for this Action and who have signed the “Acknowledgment and  
30                 Agreement to be Bound” (Exhibit A);

(g) The author or recipient of a documents containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) During their depositions, witnesses and attorneys for witnesses in the Action to whom disclosure is reasonably necessary provided that (1) The deposing party requests that the witness sign the "Acknowledgment and Agreement to be Bound" (Exhibit A); and (2) They will not be permitted to keep any confidential information unless they sign the "Acknowledgment and Agreement to be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
IN OTHER LITIGATION.

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

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- (a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
  - (b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
  - (c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court form which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions shall be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- (1) Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
  - (2) Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
  - (3) Make the information requested available for inspection by the Non-Party, if requested.

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1                             (c) If the Non-Party fails to seek a protective order from this court within  
2 14-days of receiving the notice and accompanying information, the Receiving  
3 Party may produce the Non-Party's confidential information responsive to the  
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
5 Party shall not produce any information in its possession or control that is subject  
6 to the confidentiality agreement with the Non-Party before a determination by the  
court. Absent a court order to the contrary, the Non-Party shall bear the burden  
and expense of seeking protection in this court of its Protected Material.

7                             10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8                             If a Receiving Party learns that, by inadvertence or otherwise, it has  
9 disclosed Protected Material to any person or in any circumstance not authorized  
10 under this Stipulated Protective Order, the Receiving party must immediately (a)  
11 notify in writing the Designating party of the unauthorized disclosure(s), (b) use  
12 its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
13 inform the person or persons to whom unauthorized disclosures were made of all  
the terms of this Order, and (d) request such person or persons to execute the  
“Acknowledgment and Agreement to be Bound” (Exhibit A).

14                             11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
15 PROTECTED MATERIAL

16                             When a Producing Party gives notice to Receiving Parties that certain  
17 inadvertently produced material is subject to a claim of privilege or other  
18 protection, the obligations of the Receiving Parties are those set forth in the  
19 Federal Rule of Civil Procedure, Rule 26(b)(5)(B). This provision is not intended  
20 to modify whatever procedure may be established in an e-discovery order that

1 provides for production without prior privilege review. Pursuant to Federal Rule  
2 of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect  
3 of disclosure of a communication or information covered by the attorney-client  
4 privilege or work product protection, the parties may incorporate their agreement  
5 in the stipulated protective order submitted to the court.

6       12. MISCELLANEOUS

7           12.1 Right to Further Relief.

8       Nothing in this Order abridges the right of any person to seek its  
9 modification by the Court in the future.

10          12.2 Right to Assert Other Objections.

11       By stipulating to the entry of this Protective Order, no Party waives any  
12 right it otherwise would have to object to disclosing or producing any information  
13 or item on any ground not addressed in this Stipulated Protective Order.  
14 Similarly, no Party waives any right to object on any ground to use in evidence of  
any of the material covered by this Protective Order.

15          12.3 Filing Protected Material.

16       A Party that seeks to file under seal any Protected Material must comply  
17 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
18 pursuant to a court order authorizing the sealing of the specific Protected Material  
19 at issue. If a Party's request to file Protected Material under seal is denied by the  
court, then the Receiving Party may file the information in the public record  
unless otherwise instructed by the court.

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1       13. **FINAL DISPOSITION**

2              After final disposition of this Action, as defined in paragraph 4, within 60-  
3 days of a written request by the Designating Party, each Receiving Party must  
4 return all Protected Material to the Producing Party or destroy such material. As  
5 used in this subdivision, “all Protected Material” includes all copies, abstracts,  
6 compilations, summaries, and any other format reproducing or capturing any of  
7 the Protected Material. Whether the Protected Material is returned or destroyed,  
8 the Receiving Party must submit a written certification to the Producing Party  
9 (and, if not the same person or entity, to the Designating Party) by the 60-day  
10 deadline that (1) identifies (by category, where appropriate) all the Protected  
11 Material that was returned or destroyed and (2) affirms that the Receiving Party  
12 has not retained any copies, abstracts, compilations, summaries, or any other  
13 format reproducing or capturing any of the Protected Material. Notwithstanding  
14 this provision, Counsel are entitled to retain an archival copy of all pleadings,  
15 motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
correspondence, deposition and trial exhibits, expert reports, attorney work  
product, and consultant and expert work product, even if such materials contain  
Protected Material. Any such archival copies that contain or constitute Protected  
Material remain subject to this Protective Order as set forth in Section 4  
(DURATION).

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1       14. **VIOLATION**

2           Any violation of this Order may be punishable by any and all appropriate  
3 measures including, without limitation, contempt proceedings and/or monetary  
4 sanctions.

5           IT IS SO ORDERD.

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7           DATED: February 11, 2020

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11           /S/ Frederick F. Mumm  
12           Frederick F. Mumm  
13           United States Magistrate Judge

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**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_ [date] in the case of *Grier v. County of San Bernardino, et al.*, Central District of California Case No. 5:19-cv-00415-JGB(SHK). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner the information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to the enforcement of this Stipulated Protective Order.

Date:

**City and State where sworn and signed:**

Printed name:

Signature: